cdfa CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE
A. G. Kawamura, Secretary

June 2, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

RE: Bay-Delta Conservation Plan Notice of Preparation (NOP) – NEPA/CEQA Scoping Comments

Dear Ms. Brown:

Thank you for the opportunity to provide early scoping comments for the preparation of the Bay-Delta Conservation Plan's (BDCP) Environmental Impact Report/Statement. The Department of Food and Agriculture's mission is to "…ensure delivery of safe food and fiber through responsible environmental stewardship in a fair marketplace for all Californians." This mission derives from one of the major principles of the state's policy on agricultural sustainability, the Thurman Agricultural Policy Act, which calls on the Department:
(c) To sustain the long-term productivity of the state's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources. (Food and Agriculture Code Section 821)

It is based on our mission and this state legislative policy that we offer the following scoping comments in response to your Notice of Preparation.

The Project

In short, the BDCP project's purpose is to develop a plan for the conservation of specified state and federal Endangered Species Act-listed species and their habitat. Once approved by the state and federal wildlife and fisheries agencies, compliance with the plan will enable the operation of state and federal water projects to provide a reliable source of water to more than 20 million Californians and several million acres of farmland in California's agricultural heartland and beyond. The BDCP Planning Agreement stipulates that the conservation plan will be bounded by the "Statutory Delta…including, as appropriate, conservation actions in the Suisun Marsh, Suisun Bay and areas upstream of the Delta."

This plan is important to California agriculture, not just within the Delta, but in many ways, statewide. To sustain the internationally important food production that California's farmers and ranchers have achieved, depends on satisfying both the legal and moral imperatives to maintain and enhance California's unique and diverse biodiversity. It is in this spirit that we offer our comments.

General Comments

In our comments we have endeavored to be consistent with the recommendations of the Governor's Delta Vision Blue Ribbon Task Force's January 29, 2008 Delta Vision Report. The Report envisions a future Delta whose:

"...land use pattern must enhance both the region's unique values and the overall resilience of the system. To preserve the Delta's place values, the region's landscape should continue to be dominated by agriculture, wildlife habitat, and recreation, with mutually beneficial mixtures of these wherever possible. Specialized forms of agriculture that are particularly well suited to the Delta must be encouraged, such as subsidence-reversing crops, carbon-sequestering crops, and wildlife-friendly farming practices."

This policy statement cannot be taken out of context of the Task Force's complete vision, whose first, over-arching, recommendation is that "[t]he Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta."

Taken together, it is our understanding that implementation of the Task Force's forthcoming Delta Strategic Plan, will likely result in adverse impacts on agriculture in the Delta to achieve the co-equal goals and satisfy the requirements of state and federal Endangered Species Acts. We also expect from state policy and the Vision Report that, consistent with CEQA and NEPA, every attempt will be made to avoid, reduce, minimize or compensate for adverse impacts to agricultural resources.

We recommend that where significant adverse impacts to agricultural resources cannot be avoided, the record of decision adopting the final EIR/S include a statement of overriding considerations that includes a documentation of the net watershed-wide benefits to agriculture that implementation of the BDCP will hopefully achieve.

Project Setting

The EIR/EIS should describe the agricultural setting in which the DBCP will be implemented. We recommend that, at a minimum, the following attributes be described:

1. Acreage and classification of the agricultural lands of the project area using the Department of Conservation's Farmland Mapping and Monitoring Program's classification system;

2. Acreage and gross production value of crops grown in the Delta using county agricultural commissioner crop reports and recent DWR land use map of the Delta;
3. State and local agricultural land conservation policies that apply to Delta agricultural lands, including county general plan and zoning designations, Williamson Act agricultural preserve and contracted lands (including Farmland Security Zone contracts), and conservation easements intended to protect lands for agricultural purposes;
4. The unique attributes of the Delta that distinguish it from other growing regions of the state and the advantages that these growing conditions give Delta agriculture; and,
5. Unique obstacles to Delta agriculture, information that could be important in distinguishing between lands when minimization of project impacts on agriculture can be achieved by avoiding the best farmland in favor of marginal farmlands. This information may also be useful where land or agriculture infrastructural improvements can be made to remove obstacles as a form of compensatory mitigation.

Agricultural Resource Impacts

The NOP recognizes agriculture as one resource that will be potentially impacted. As listed in the NOP, agriculture is lumped under "Land Use." We recommend that because agriculture is the predominant land use in the Delta, and the only land use listed whose productivity is dependent on the Delta's unique natural soil, water and climate conditions, it be given separate focus as recommended in the CEQA Guidelines.

We recommend that the following impacts be addressed in the EIR/EIS.

Direct loss of agricultural land to other, non-agricultural land uses including: land needed for infrastructure (e.g., new levees and levee improvements, new or widened water conveyance facilities); new, or expanded use of existing floodwater conveyance (e.g. increased flood frequency of the Yolo By-pass) or storage; and, wildlife habitat.

Indirect loss of agricultural land due to the loss of infrastructure needed to support farming in the Delta, such as transportation access to agricultural islands; and, loss or impairment of agricultural land as a result of the loss of water supply or water quality.

While the loss of water quality or supply may not eliminate all agricultural uses of impacted lands, it should nevertheless be considered as a potential adverse impact on agriculture. One of California agriculture's keys to success is in its ability to grow an immense variety of crops to fill a large variety of market niches throughout the year. Delta agriculture is one of the growing niches that supports this ability and is a microcosm of the state's crop diversity. A loss of crop selection flexibility needed to

respond to international and domestic markets can make the difference in a farm's sustainability.

Indirect Impacts on Delta agricultural land. These impacts can include: seepage and levee endangerment of agricultural islands from the conversion of adjacent islands to open water or other forms of wetland habitat; creation of terrestrial or wetland habitat on portions of agricultural islands, which could impair agricultural use of remaining lands by imposing restrictions on agricultural practices that pose the potential for "take" of ESA listed species; depredation of crops by wildlife from adjacent habitat restoration or creation; and, the spread of noxious weeds and pest diseases from unmanaged lands set aside for future habitat restoration or other uses.

The cumulative loss of agricultural land. Because this EIR/EIS is addressing a distinct agricultural region, the cumulative loss of agricultural land in this region can lead to a tipping point where the remaining lands in production are insufficient to support the services (i.e., supplies, technical assistance, shipping, processing, etc.) needed for the region's agriculture to remain competitive. This critical mass of agriculture, once lost, would have impacts not only on jobs, income, tax revenues and communities, but on the ability of landowners to pay reclamation fees that contribute to the maintenance of levees that are not only important to agriculture, but ecosystems and water quality.

The cumulative impacts of the loss or impairment of agricultural resources should be documented. This analysis should focus on impacts resulting from the kinds of actions that the BDCP contemplates, but also include other causes, such as urbanization. The Department of Conservation's Farmland Conversion Reports document land use changes going back to 1984 and can be a source of information on retrospective conversions of agricultural land. The Department of Water Resource's land use maps could also be used to document changes in crop patterns as a result of public acquisitions of private farmland. Finally, the Delta Protection Commission has kept track of public acquisitions and development projects in the Primary Zone of the Delta, a record that could inform this analysis.

Though not required explicitly by CEQA, we suggest that a second, perhaps less detailed, level of cumulative impact analysis of agricultural land be conducted on the Delta-dependent region. Such an analysis would help to create a context for the analysis of cumulative agriculture impacts in the Delta.

The actions contemplated by the BDCP are just one of a large number of actions occurring statewide that are removing lands from agricultural production. The Department of Conservation reported that irrigated farmland decreased by a record amount during its last (2002-2004) mapping cycle, with the San Joaquin Valley leading the way in farmland lost. Statewide, nearly 140,000 acres were lost during the two-year period. (This compares to a decline of approximately 70,000 acres of irrigated cropland ten years earlier, according to the Department of Conservation.)

While urbanization is the primary cause of the loss of farmland, land idling and conversion to public open spaces (including habitat restoration), are also significant causes. Also contributing to agricultural land losses are land retirement on the west side of the San Joaquin Valley as a strategy to manage saline drainage water, as well as long-term land idling for water transfers to urban or environmental uses in Imperial and Palo Verde Valleys. The loss of agricultural growing regions as Los Angeles County (California's number one agricultural county as late as 1950) and the Santa Clara Valley, are a few examples of how the cumulative, incremental loss of agricultural land can lead to the loss of entire, unique growing regions. These losses, as noted earlier, erode an important attribute of California agriculture, its diversity of unique growing niches.

Because the BDCP has the potential to directly and indirectly impact agricultural land throughout the Delta and its watershed (and in other Delta-dependent counties) both adversely, as enumerated above, and positively by increasing water supply reliability and quality, the analysis of impacts on agricultural resources should be broad. We suggested such a net analysis in our opening comments (as part of findings of overriding consideration to address unavoidable impacts), but this kind of analysis could be embedded in the impact section of the EIR/EIS, as well.

Project Alternatives

We recommend that the primary approach to mitigation of agricultural resource impacts be through the selection of project alternatives and conservation measures that avoid or minimize impacts.

For example, the creation of flood by-passes have been contemplated for the creation of floodplain habitat and managing flood flow pressures on levees. Some would have greater impacts on agricultural land than others.

Another example is Cache Slough as a prime target for tidal marsh and floodplain habitat. A recent analysis by the UC-Davis Agricultural Issues Center, "The Potential Impact of the Delta and Suisun Marsh Habitat Restoration Plans on Agricultural Production in Solano County" (March 14, 2008), illustrated an approach that would gain the desired acreage of restored habitat while avoiding converting from farmland use the islands in the complex that provide the greatest levels of agricultural production for Solano County.

Another approach to building in mitigation to the BDCP is a "working lands" approach, as suggested by the Delta Vision Report. Where already degraded agricultural lands, such as Liberty and Prospect Islands, or public lands, will not serve the purposes of the BDCP, we recommend the next best approach to avoidance or minimizing impacts is to engage landowners in collaborative approaches to achieve BDCP objectives through the creation of multi-functional landscapes that keep as much agricultural land in production as possible.

Agricultural/conservation easements can be used to secure durable public improvements, such as restoration and flood setbacks, while allowing wildlife and floodplain compatible agricultural uses to continue. Staten Island is an example where migratory waterfowl habitat was protected and enhanced by keeping the land is a wildlife compatible agricultural use, as well as through changes in land management that benefit wildlife and agricultural profitability.

We recommend that water conveyance and management alternatives analyzed be broad, consistent with the Governor's recent letter on water management. Not only should through-Delta alternatives be given thorough analysis, but the use of water transfers among the various water agencies that use Delta import and export flows to create flexibility for maintaining in-Delta water quality, should also be considered.

The BDCP Planning Agreement defines the planning area as the statutory Delta, but acknowledges that it may be necessary to include conservation measures outside of the Statutory Delta that advance the goals of the BDCP within the Delta. We recommend that as part of the Conservation Plan consideration be given to providing incentives and technical assistance to upstream agricultural landowners in the San Joaquin Valley to manage salt-laden drainage on-farm pursuant to The San Joaquin Valley Drainage Management Program. Similar incentives, perhaps in cooperation with local resource conservation districts in order to leverage USDA Farm Bill Conservation Title program funding, could be provided to growers throughout the watershed to increase Delta flows through an agricultural water account program similar to the Environmental Water Account.

Mitigation Measures

The CALFED Bay-Delta Program's Record of Decision adopted more than 30 mitigation measures to address the direct and indirect impacts on agricultural land. We recommend your consideration of these mitigation measures to address both programmatic and project-specific impacts of BDCP implementation on agriculture.

In particular, we recommend the purchase of agricultural conservation easements to protect Delta agricultural lands whose protection also protects Conservation Plan investments in ecosystem restoration from incompatible uses such as urbanization. While a 1:1 mitigation ratio is common among many local governments in California, Fresno County recently required a 3:1 mitigation ratio for each acre of agricultural land converted to a non-agricultural use. The Delta Protection Commission has formed a committee to work on an agricultural conservation strategy for the Delta, a strategy that involves existing land trusts that operate within the Delta. This strategy could serve as a guide for BDCP mitigation of agricultural land impacts using easements.

In lieu of direct mitigation using conservation easements, we suggest considering an agricultural mitigation bank. Mitigation fees to compensate for the loss of agricultural resources could be deposited into an account managed by a Delta governance entity

to not only support the acquisition of conservation easements, but also agricultural land enhancement and conservation practices. Such practices could include not only water conservation and the creation of farm-compatible habitat, but help protect farmland from soil loss through transition to conservation tillage, increased use of cover cropping, post-harvest flooding, and wetland agriculture. Funds from the account could also help with improving water quality by supporting the installation of agricultural drainage treatment practices, such as wetlands, and sediment and tail-water ponds. The account could also support research and experimentation with alternative crops that reverse subsidence and help farmers participate in carbon markets.

The definition of Prime Agricultural Land includes a secure and adequate irrigation water supply. Potential actions to mitigate for the conversion of such lands therefore could include actions that improve water supply and reliability of that supply for other agricultural lands dependant on the Delta for irrigation water supplies. These improvements would be in addition to the water supply reliability improvements of the BDCP, and would be mitigated at a level of 1:1 to 3:1.

Finally, we recommend that the EIR/EIS consider the use of a modified version of the state (Department of Conservation) or federal (USDA) Land Evaluation and Site Assessment (LESA) model to determine the significance of agricultural land impacts. Through an interagency agreement with this Department and the Department of Conservation, a modified version of LESA could be developed that takes into account factors important to the productivity of agriculture that are unique to the Delta, such as levee condition, depth of subsidence, water quality and access to suppliers, and buyers and processors.

Thank you for the opportunity to provide scoping comments on the Bay-Delta Conservation Plan's NOP. For the sake of California's agriculture, its economy as a whole, and the health of the Delta watershed ecosystems, the work being done on this Conservation Plan is as important to California's future as any other endeavor in which the state is now involved. It is my hope that our comments will contribute positively to the achievement of a successful Plan. If you should have questions, please call me at (916) 657-4956.

Sincerely,

Original signed by

Steve Shaffer, Director
Office of Agricultural and Environmental Stewardship

cc: Secretary A.G. Kawamura
California Department of Food and Agriculture